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October 28, 1977

Lloyd M. Price, Commissioner
Department of Revenue Administration
19 Pillsbury Street
Concord, New Hampshire 03301

Dear Mr. Price:

By letter dated October 26, 1977 you have asked our opinion whether you have the authority pursuant to RSA 71-A:10 (Supp. 1975) to extend the date for filing Business Profit Tax returns pursuant to RSA 77-A:6, I as amended by Laws 1977, 593:3. Our opinion is that the authority granted to you by RSA 71-A:10 does not permit such an extension.

Laws 1977, 593:3 changed the date on which a "business organization" must file a return of its gross business income from the "first day of the fifth month following expiration of its taxable period," RSA 77-A:6, I, as amended by Laws 1973, 544:9, to the "fifteenth day of the third month" following that period. As amended, RSA 77-A:6, I reads as follows:

I. Every business organization having gross business income in excess of \$6,000 as defined by RSA 77-A:1, VI, during the taxable period, shall on or before the fifteenth day of the third month following expiration of its taxable period, make a return to the commissioner under such regulations and in such form or manner as the commissioner may prescribe. Returns shall contain full data as to all matters required by the commissioner for correct computation of taxable business profits and the tax assessed thereon. All returns shall be signed by the taxpayer or by its authorized representative, subject to the pains and penalties of perjury.



The term "business organization" is defined in RSA 77-A:1, I to include, among other entities

any enterprise, whether corporation, partnership, sole proprietorship, association, business trust, real estate trust or other form of organization, which is organized for gain or profit and which derives economic benefit from the employment of property or labor or both within the state....

Thus, the term includes individual and non-corporate, as well as corporate taxpayers.

You have informed us that your proposed extension of the new filing period provided by Laws 1977, 593:3 was designed to resolve a problem caused by the change in that Chapter of the filing date for individual returns. The "gross business profits" of a business organization is determined from the federal tax returns of the organization. See RSA 77-A:1,III (Supp. 1975). The filing date for New Hampshire business profit tax returns was therefore fixed at a date later than that of the federal return so as to facilitate the filing of the return. You have told us that Laws 1977, 593:3 was designed to make the business profits tax filing date for corporate entities the same as the federal filing date. The problem which your proposed administrative ruling would address is that by its express terms, Laws 1977, 593:3 has changed the filing date for all business organizations, including non-corporate entities and individuals. The effect of this change is to require such organizations to file their business profits tax returns prior to their federal returns, from which they are expected to compute their gross business profits. Your proposed administrative regulation would extend the filing date for non-corporate entities to conform to the federal filing date.

Our opinion that you cannot adopt such a regulation is based on the language of RSA 77-A:6,I and 71-A:10. RSA 77-A:6,I as amended by Laws 1973, 544:9 and Laws 1977, 593:3 establishes a mandatory filing date by providing that organizations "shall" file their return. This language evidences a clear legislative intent that, absent individual extensions for "good cause," (See RSA 77-A:9 (Supp. 1975)), every return must be filed on the established filing date. In contrast to this mandatory language, RSA 71-A:10 provides only that

the department of revenue administration shall have the power and duty to oversee the collection of all state taxes and may make such reasonable rules and regulations as may be necessary for the purpose.

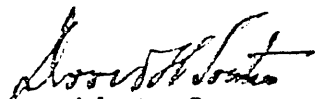
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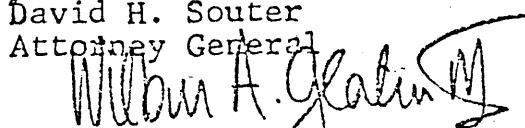
We do not believe that a rule or regulation which extends the mandatory filing date set out in Laws 1977, 593:3 could be considered a reasonable one, in light of the express language of the statute. Rules and regulations adopted as an exercise of legislative powers are generally considered proper only if they are reasonable and within the granted power. See Davis, Administrative Law, 1958 Ed., §5.03. A rule or regulation which is inconsistent with a statute is neither reasonable, nor within the granted power. We also cannot read the language in Laws 1977, 593:3 providing that returns shall be made "under such regulations and in such form or manner as the Commissioner may prescribe," as permitting an extension of the filing date. The term "regulation" as used therein may not be construed to expand the authority provided by RSA 71-A:10. Furthermore, that language pertains to the format and content of the return, not to the time of filing.

In reaching our conclusion, we are not unaware of the fact that the intent of the Legislature may have been to change the filing date for corporations alone. It might therefore be argued that a regulation extending the filing for non-corporate taxpayers effectuates this intent. The difficulty with this position is that, even conceding the intent, the express language used by the Legislature does not manifest it. It applies to all business organizations. In view of the express language, we cannot interpret Chapter 593 in a manner which does violence to its express language. It is an established rule of statutory construction that even where the purposes of the Legislature seem obvious, such purposes cannot be recognized in the face of clear language to the contrary. Trustees of Phillips Exeter Academy v. Exeter, 92 N.H. 413 (1943). It also follows that a rule or regulation cannot be justified on the basis of an intent contrary to the express language of the statute.

It is necessary to add one caveat to our opinion. We have provided this response to facilitate the filing of emergency legislation in this session. We have not been able to do the same extensive research that we would ordinarily undertake in preparing an opinion of this nature. Since we have not had time to complete our research on this subject, we are giving this opinion on the understanding that we may wish to qualify, amend or supplement it after further research. We would also point out, however, that in spite of this caveat we do not believe that additional research will necessitate a change in or modification of this opinion.

Yours sincerely,


David H. Souter
Attorney General


Wilbur A. Glahn, III
Assistant Attorney General